

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, October 1, 2004

Division One

A102584 -- In re Jeni B., et al., a Person Coming Under the Juvenile Court Law.

By the Court: Respondent's request for judicial notice is granted and the court will take judicial notice of the documents attached to the motion. Respondent's motion to dismiss appeal as moot is granted and the appeal is dismissed. Marchiano, P.J.

Monday, October 4, 2004

Division Two

A102560 -- The People v. Elias A. Gaitan.

The matter is remanded to the trial court with instructions that appellant be permitted to withdraw his no contest plea if he moves to do so within 30 days of the date the remittitur is filed in the superior court. (See *People v. Cruz, supra*, 44 Cal.3d at p. 1254.) If he does so move, the prosecution shall be given the opportunity to reinstate the charges dismissed as part of the plea bargain. (See *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1268-1269.) If appellant does not so move, the court shall reconsider appellant's sentence in accordance with the views expressed herein. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A104091 -- In re Elias A. Gaitan, on Habeas Corpus.

By the Court: Petitioner has filed a timely petition for writ of habeas corpus (*In re Robbins* (1998) 18 Cal.4th 770; *In re Clark* (1993) 5 Cal.4th 750) and has made out a prima facie case that he was denied his Sixth Amendment right to a fair jury trial due to ineffective assistance of counsel. Accordingly, the Director of the Department of Corrections is ordered to show cause before the Honorable Robert S. Boyd of the Sonoma County Superior Court, when the matter is placed on calendar, why the relief requested in the petition should not be granted. (*In re Hochberg* (1970) 2 Cal.3d 870, 875-876, fn. 4.) (See order.) Kline, P.J.

Tuesday, October 5, 2004

Division One

A103020 -- In re Javier H., a Person Coming Under the Juvenile Court Law. The People v. Javier H.

The finding of guilt, adjudication of wardship and commitment to CYA are affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, October 5, 2004

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Swager, J., and Margulies, J.; and Fred Abad, Deputy Clerk.

Justice Stein is unavoidably not present for oral argument. Counsel waived the presence of Justice Stein in Ahmed v. Peralta Community College, Jackson v. Health Net of California, Inc., Iron & Silk, Inc. v. Champion Arts, Inc., and Iron & Silk, Inc. v. Superior Court.

A098935 The People,
 v.
 Jeffrey Lee Duvardo.
Cause called and argued by Dennis Riordan, counsel for appellant, and Joan Killeen, counsel for respondent. Cause ordered submitted.

A106078 Richard George,
 v.
 California State Franchise Tax Board.
Cause called and argued by Richard George, appellant in pro per, and Anne Burr, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Margulies left the bench.

A105426 Steven Ahmed,
 v.
 Peralta Community College District, et al.
Cause called and argued by Steven Ahmed, appellant in pro per, and Michael Kennedy, counsel for respondents. Cause ordered submitted.

A105220 Reginald Jackson,
 v.
 Health Net of California, Inc.
Cause called and argued by Raul Martinez, counsel for appellant, and Laurence Padway, counsel for respondent. Cause ordered submitted.

A106711 Iron & Silk, Inc.,
 v.
 Superior Court of Contra Costa County;
 Champion Arts, Inc., et al.
 Cause called and argued by James Weixel, counsel for petitioner, and
 David Phillips, counsel for real parties in interest. Cause ordered
 submitted.
 At this point in the proceedings, Justice Marchiano left the bench and
 Justice Margulies rejoined the bench. Justice Swager presided over the last
 case on calendar.

A105775 Iron & Silk, Inc.
 v.
 Champion Arts, Inc., et al.
 Cause called and argued by David Given, counsel for appellants, and James
 Weixel, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Tuesday, October 5, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Swager, Acting PJ., and Margulies, J.; and B. Robbins, Deputy Clerk.

Acting Presiding Justice Swager announced that Justice Stein was unavoidably unable to be present for oral argument. All parties agreed to waive the presence of Justice Stein and proceeded with argument.

- A104100 The People,
v.
John Fitzgerald Clay.
Causes called and argued by Alexander P. Green, counsel for appellant, and Ann Wathen, counsel for respondent. Cause ordered submitted.
- A105352 In re Xaviera F.
The People,
v.
Xaviera F.
Cause called and argued by Gerald A. Clausen, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.
- A103877 Mitchell J. Pearce,
v.
State Compensation Insurance Fund, et al.
Cause called and argued by M. Van Smith, counsel for appellant, and Dean J. McElroy, counsel for respondents. Cause ordered submitted.

A104190 Michael H. Clement, et al.,
v.
Gary Goodrich, et al.
Cause called and argued by Richard T. Bowles, counsel for appellants, and
Patrick J. McMahon, counsel for respondents Goodrich, et al., and Geordan
Goebel, counsel for respondent Beard. Cause ordered submitted.

Court adjourned.

No cases were scheduled for Wednesday, October 6, 2004.

Tuesday, October 5, 2004 (continued)

Division Two

A106733 -- Madeleine Heffel v. William Lyon Homes, Inc.

WLHI's appeal from the judgment, filed 66 days after notice of entry of judgment, is untimely and must be dismissed. Its appeal from the order denying its motion for JNOV was timely, but because the motion itself was not, and the trial court lacked jurisdiction to consider it, the appeal from the denial of the motion for JNOV must also be dismissed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A104489 -- John Loar, et al. v. Richard Singer, et al.

The order appealed from is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A105091 -- In re Emma M. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Jessica W.

With respect to Emma, the juvenile court's dispositional order is affirmed. With respect to Conner, the juvenile court's dispositional order is reversed, and we remand to the juvenile court with directions to ensure that the Bureau give adequate notice of Conner's dependency proceeding to the Cherokee tribes, as required by the ICWA, before proceeding further. If proper ICWA notice results in a determination that Conner is an Indian child within the meaning of the ICWA, then the juvenile court shall conduct a new dispositional hearing. If not, the juvenile court shall reinstate its dispositional order as to Conner. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Tuesday, October 5, 2004 (continued)

Division Three

A105162 -- The People v. Reginald Anthony Green.

In summary, we conclude that the trial court did not err in holding that the actions of the police in this case substantially complied with the knock-notice requirements of sections 844 and 1531. We thus find no constitutional infirmity in the search. Accordingly, the judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

Division Four

A103500 -- The People v. John Wayne Fontenot.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Division Five

A105996 -- Thomas Ellis v. Patricia Ellis.

The order is reversed. Father's request for sanctions denied. Costs to Mother. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Wednesday, October 6, 2004

Division One

A104977 -- The People v. Ricky Colding.

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A106078 -- Richard George v. Franchise Tax Board.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A103850 -- The People v. Larry John Sprankle.

The restitutionary order is stricken and the matter is remanded for further proceedings consistent with this opinion. In all other respects, the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A107272 -- Glenda W. v. Superior Court of Alameda County; Alameda County Social Services Agency; R.P.I.

The petition for extraordinary writ is denied on the merits. Because the permanency planning hearing is presently set for November 10, our decision is final as to this court immediately. (Rule 24(b)(3).) Ruvalo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A101223 -- The People v. Jorge A. Pantoja.

By the Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on September 7, 2004, be modified in the following particulars: (See order.) There is no change in the judgment. Respondent's petition for rehearing is denied. McGuinness, P.J. (Certified for Publication.)

Wednesday, October 6, 2004 (continued)

Division Four

A105363 -- Ronald Daley v. Suzanne Meek Tollefson.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J.
(Not for Publication.)

A105212 -- Arthur L. McIntyre et al. v. Cruise America, Inc.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Sepulveda, J.
(Not for Publication.)

Division Five

**A107267 -- Robert H. v. The Superior Court of Contra Costa County;
Contra Costa County Bureau of Children and Family Services, R.P.I.**

The order to show cause is discharged, and the petition for extraordinary writ review is denied on the merits. (Cal. Const., art. VI, § 14; rule 39.1B(o); *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a .26 hearing. (§ 366.26, subd. (I).) Because the .26 hearing is set for October 20, 2004, our decision is immediately final as to this court. (Rule 24(b).) Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Thursday, October 7, 2004

Division Four

A106229 -- Cesar Leongson et al. v. Harleysville Mutual Insurance Company et al.

The judgment is affirmed. Rivera, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A102544 -- Eileen Quacchia v. Daimlerchrysler Corporation.

The Court: The petition for rehearing filed by appellant on September 30, 2004, is denied. The written opinion filed on September 15, 2004, is now certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Kay, P.J. (Certified for Publication.)

Division Five

A104931 -- The People v. Angel Arias.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A104966 -- Nexeon Communications, Inc. et al. v. Global Communications Partners II, L.P. et al.

The judgment is reversed. Costs to appellant. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A104959 -- Service Employees International Union, Local 87, AFL-CIO v. Dan Siegel.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Friday, October 8, 2004

Division One

A102308 -- Data Communications Professionals v. Pacific Bell Network Integration, et al.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

A107478 -- Mark E. Schakel II et al. v. The Superior Court of Sonoma County, Gary DeRosier, R.P.I.

The Court:* The superior court abused its discretion when it granted plaintiff's motion to file a second amended complaint to alleged punitive damages. Therefore, let a peremptory writ of mandate issue commanding respondent, Superior Court of Sonoma County, to set aside its order filed August 10, 2004, granting plaintiff Gary DeRosier's motion to file a second amended complaint, and to instead deny that motion and enter its order striking the filing of the second amended complaint. The stay of trial previously imposed shall remain in effect until issuance of the remittitur. Petitioners shall recover their costs. (Not for Publication.)

*Before Marchiano, P.J., Swager, J., and Margulies, J.

A106290 and A107482 -- In re Eric T., a Person Coming Under the Juvenile Court Law. Humboldt County Department of Health and Human Services v. Richard T.

By the Court: Appellant's motion to consolidate the above-referenced appeals is granted for purposes of briefing, oral argument and decision. Both case numbers shall appear on all documents filed in this Court. Appellant's consolidated opening brief shall be due November 1, 2004. Marchiano, P.J.

Friday, October 8, 2004 (continued)

Division Two

A100600 -- Ali Mirzai et al. v. Joseph Matossian.

The judgment is affirmed. Plaintiffs shall recover their costs in connection with this appeal. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.) (Not for Publication.)

Division Three

A101223 -- The People v. Jorge A. Pantoja.

By the Court: Corrected Order Modifying Opinion and Denying Rehearing. As a result of a clerical error, the order modifying opinion and denying rehearing, filed on October 6, 2004, inadvertently omitted paragraph 4 set forth below. Accordingly, this corrected order is filed nunc pro tunc as of October 6, 2004. It is ordered that the opinion filed herein on September 7, 2004, be modified in the following particulars: (See order.) There is no change in the judgment. Respondent's petition for rehearing is denied. Pollak, Acting P.J. (Certified for Publication.)

Division Four

A105136 -- Cordio, Inc. v. Liveperson, Inc.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

Division Five

A105078 -- In re Carolyn S. et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children and Family Services v. Donald S.

The dispositional order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Tuesday, October 12, 2004

Division One

A102451 -- The People v. Terrell Cross.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A104981 -- The People v. Paul Arthur Pedersen.

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A104177 -- In re Carlos E., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Barbara A.

The appeal is dismissed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A100240 -- R. Thomas Fair v. Karl E. Bakhtiari et al.

The order denying plaintiff's motion to compel arbitration is reversed. The matter is remanded to the trial court with directions to vacate its order denying plaintiff's motion to compel arbitration, and to enter an order granting that motion. Costs on appeal are awarded to plaintiff. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Partial Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, October 12, 2004

The Court convened at 9:30 a.m. at Golden Gate University, which is located at 536 Mission St., San Francisco, California. Present: Kay, P.J., Reardon, J. and Sepulveda, J.; Channing Hoo and Pamela Aguilar, Deputy Clerks; CHP Officers Vincent Chambers, Arnold Stamps, Shawn Chase, and Stephen Umeki, Bailiffs.

A104280 People
 v.
 Teresa Jean Miller
Cause called. John Staley argued for appellant Miller. Allan Yannow argued for respondent. Cause submitted.

A105868 Applera Corporation
 v.
 Roche Molecular Systems, Inc. et al.
Cause called. David M. Heilbron argued for appellants Roche et al. Vernon M. Winters argued for respondent. Cause submitted.

For the following cause, the Court reconstituted itself to include: Kay, P.J., Reardon, J. and Rivera, J.

A103046 Robert Krumme
A103742 v.
 Mercury Insurance Company et al.
Causes called. Douglas L. Hallett argued for appellants Mercury et al. Arthur D. Levy argued for respondent. Causes submitted.

For the following cause, the Court reconstituted itself to include: Reardon, Acting P.J., Sepulveda, J. and Rivera, J.

A104871 Brian Pitnick
 v.
 Kim Kuhlmann et al.
Cause called. George M. Wallace argued for appellants Kuhlmann et al. James Cunningham argued for respondent. Cause submitted.

The Court adjourned at 12:03 a.m.

Wednesday, October 13, 2004

Division One

A104190 -- Michael H. Clement et al. v. Gary Goodrich et al.

The judgment and order appealed from are affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A105904 -- The People v. Marcus Frison.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A102919 -- Hung Ha v. Sean Aranas et al.

The Court: It is ordered that the opinion filed herein on September 24, 2004, be modified at page 1, to reflect the correct Alameda County Superior Court number of 2002-73289. There is no change in the judgment. Stein, Acting P.J. (Not for Publication.)

Division Two

A103168 -- Naveen Chopra et al. v. Advo, Inc.

The judgment is affirmed. Plaintiffs are awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A102885 -- The People v. Irving Leroy Davey.

The judgment as entered is reversed, and the case is remanded to the trial court for resentencing and entry of a new judgment consistent with this opinion. Ruvolo, J. We Concur: Kline, P.J., Haerle, Acting P.J. (Certified for Partial Publication.)

Thursday, October 14, 2004

Division One

A105220 -- Reginald Jackson v. Health Net Insurance Company.

The order denying the motion to compel arbitration is affirmed.
Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A102394 -- The People v. Donald Curtis Samson.

Accordingly, the trial court is directed to correct the abstract of judgment to award defendant 342 days of sentence credits rather than 339 days, and to forward the corrected abstract of judgment to the Department of Corrections. In all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Three

A100714 -- CCPA No. 1 v. County of Sonoma.

The judgment is affirmed. Corrigan, J. I Concur: McGuiness, P.J. (See dissenting opinion by Pollak, J.) (Certified for Publication.)

Division Four

A105500 -- In re Travis E., a Person Coming Under the Juvenile Court Law. The People v. Travis E.

We affirm the judgment of disposition. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

A104899 -- The People v. Javier Ochoa.

Judgment affirmed. Reardon, J. We Concur: Kay, P.J., Rivera, J. (Not for Publication.)

Thursday, October 14, 2004 (continued)

Division Five

A098607/A098818 -- Donna Grahn et al. v. Dillingham Construction, Inc.

Order Modifying Opinion and Denying Rehearing. The Court: The opinion filed on September 17, 2004, is modified as follows: (See order.) Appellant's petition for rehearing is denied. This modification does not effect a change in the judgment. Jones, P.J. (Not for Publication.)

Division Five

A103353 -- In re the Marriage of Carol A. and Richard C. Lam.

We vacate the order and remand the matter to the trial court for further proceedings consistent with this opinion. Appellant shall be awarded his costs on appeal. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

A104122 -- The People v. John Eric Williams.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Friday, October 15, 2004

Division One

**A103416 -- Frank Sweis v. Sequoyah Heights Homeowners Association,
et al.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

Division Three

A103541 -- The People v. John Carpenter.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J.,
Parrilli, J. (Not for Publication.)

Monday, October 18, 2004

Division One

A105426 -- Steven Nur Ahmed v. Peralta Community College District et al.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A104100 -- The People v. John Clay.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A102566 -- The People v. Bradley Scott Heller.

The conviction for attempted violation of Penal Code section 288, subdivision (a), is reversed and in all other respects the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A103830 -- The People v. Keith E. McKinley.

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication.)

Division Three

A106539 -- In re Lewis M., a Person Coming Under the Juvenile Court Law. The People v. Lewis M.

The orders of the juvenile court are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A103106 -- The People v. Jerome Green.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, October 18, 2004 (continued)

A104280 -- The People v. Teresa Jean Miller.

The judgment of conviction is affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A103409 -- The People v. Berny Orozco.

The judgment of conviction is affirmed, but the matter is remanded to the trial court for resentencing in accordance with the views expressed in this opinion. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication.)

Tuesday, October 19, 2004

Division One

A107389 -- Leonard S. v. The Superior Court of Marin County; Marin County Department of Health and Human Services, R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for October 26, 2004. Therefore, our decision is final in this court immediately. (Rule 24(b)(3).) Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, October 19, 2004

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Ruvolo, J., and I. Santos, Deputy Clerk.

- A101610 The People,
 v.
 Roy Edward Corpstein.
Cause called and argued by Mark Shenfield, counsel for appellant, and Jeffrey Laurence, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A104323 John H. Adza,
 v.
 City and County of San Francisco.
Cause called and argued by Thomas Del Beccaro, counsel for appellant, and Jill Figg, counsel for respondent. Cause ordered submitted.
- A104711 Mar/Dan et al.
 v.
 Wells Fargo Bank.
Cause called and argued by Alan Dell'Ario, counsel for appellant, and Geoffrey Yost, counsel for respondent. Cause ordered submitted.
- A105588 San Ramon Valley Fire Protection District,
 v.
 Contra Costa County Employees' Retirement Association et al.;
 Local 3546 of the International Association of Firefighters.
Cause called and argued by Ashley Dunning, counsel for appellant, and William Ross, counsel for respondent.
- A104352 James Flores,
 v.
 24-Hour Fitness.
Cause called and argued by Jack Siedman, counsel for appellant, and Bradley Taylor, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Justice Haerle left the bench and Justice Lambden joined the bench to participate in the last case on the morning calendar along with Justice Kline and Justice Ruvolo.

A103405 Pacific Gas & Electric Co.,
 v.
 Michael L. Balhorn et al.
Cause called and argued by John Schreiber, counsel for appellants, and Michael Wood, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J, Lambden, J., Ruvolo, J., and S. Wheeler, Deputy Clerk.

At this point of the proceedings, Presiding Justice Kline, informs the court that he will only be participating in the first two cases along with Justice Lambden and Justice Ruvolo.

A104785 The People,
 v.
 Simon L.
Cause called and argued by Elisa Joanne Stewart, counsel for appellant, and Chris Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A101946 & Phoenix American Incorporated,
A102590 v.
 W. Corey West.
Cause called and argued by Benjamin Johnson, counsel for appellant, and Joseph N. Demko, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, Presiding Justice Kline left the bench and Acting Presiding Justice Haerle participated in the remainder of the calendar along with Justice Lambden and Justice Ruvolo.

A099749 The People,
 v.
 Danny Lamont Hamilton.
Cause called and argued by Mark David Greenberg, counsel for appellant, and Violet Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A105208 The People,

v.

Kathryn Sharon Holz.

Cause called and argued by John Staley, counsel for appellant, via teleconference and Rene Chacon, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point of the proceedings, the court recessed for ten minutes.

A104742

Charles E. Galvin,

v.

Veterinary Medical Board State of California.

Cause called and argued by Kim Marie Settles, counsel for appellant, and Doron Weinberg, counsel for respondent. Cause ordered submitted.

A105778

George Matei, et al.,

v.

Angela Alioto, et al.

Cause called and argued by Steven Robinson, counsel for appellants, and Zachary Best, counsel for respondents. Cause ordered submitted.

A102962

Audrey Timmis, et al.,

v.

Kaiser Foundation Health Plan, et al.

Cause called and argued by Sharon J. Arkin, counsel for appellants, and Eve Mary Coddon and Kennedy P. Richardson, counsels for respondents. Cause ordered submitted.

COURT ADJOURNED.

Tuesday, October 19, 2004 (continued)

Division Three

A101865 -- Bill H. Fleming v. Adventist Health Clearlake Hospital, Inc., et al.

The judgment is affirmed. Respondents shall recover their costs on appeal. McGuinness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A102956 -- Jeannine A. Rouse v. Winslow C. Rouse.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Division Four

A106348 -- Joel Baker v. Oakland Unified School District.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A105213 -- The People v. Joe Robert Martinez.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Thursday, October 21, 2004

Division One

A106104 -- Pat Edgar v. Carroll Frizzell.

The order granting the motion to tax costs is reversed. The matter is remanded to the trial court with instructions to deny the motion and to award costs to defendant, for the reasons set forth in this opinion. Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

A103014 -- Hung Ha v. Alameda County.

By the Court: The petition for rehearing is denied. Since this court's September 24, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

A103877 -- Mitchell J. Pearce v. State Compensation Insurance Fund.

The judgment is affirmed. Defendant is awarded costs on appeal. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A107590 -- Lynda O. v. The Superior Court of Contra Costa County; Contra Costa County Children and Family Services Bureau, R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for December 1, 2004. Therefore, our decision is final as to this court immediately. (Cal. Rules of Court, rule 24(b)(3).) Marchiano, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

Division Two

A103456 -- Richard Paul McBride v. Garianne Boughton et al.

The judgment of dismissal is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Certified for Publication.)

Thursday, October 21, 2004 (continued)

Division Four

A105868 -- Applera Corporation v. Roche Molecular System, Inc. et al.

The order denying appellants/defendants' petition to compel arbitration and to stay proceedings pending the conclusion of arbitration is reversed. The case is remanded with directions to grant the petition. Appellants shall recover their costs incurred on appeal. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A103857 -- The People v. Scott T. Gebro.

The Court: Order Denying Petition For Rehearing and Modifying Opinion. Appellant's petition for rehearing is denied. The opinion filed September 22, 2004, is modified as follows: (See order.) The above modification does not effect any change in the appellate judgment. (Cal. Rules of Court, rule 24(c)(2).) McGuiness, P.J. (Not for Publication.)

A106780 -- In re Corey P., a Person Coming Under the Juvenile Court Law. The People v. Corey P.

The minor Corey P. appeals from the dispositional order of the juvenile court after a petition alleging that he possessed marijuana for sale was sustained. His sole contention on appeal is that the juvenile court erred by failing to determine the maximum period of confinement of three years, as required by Welfare and Institutions Code section 726, subdivision (c). Respondent concedes this error and agrees that we should modify the dispositional order to specify that the maximum period of confinement is three years. It is so ordered. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

Division Five

A106528 -- The People v. Jesus Navarette Belmonte.

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, October 21, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J.; Gemello, J.; and Richard H. Sandvik, Deputy Clerk.

A10254 Sherwood Partners, Inc
1 v.
 Zoro, LLC
Cause called and argued by Glenn P. Zwang, counsel for appellant, and by Diane Carter, counsel for respondent. Cause ordered submitted.

A10368 Sherwood Partners, Inc
0 v.
 Zoro, LLC
Cause called and argued by Diane Carter, counsel for appellant, and by Glenn P. Zwang, counsel for respondent. Cause ordered submitted.

A10443 Paul Mahlan
6 v.
 State Of California
 Safecon Insurance Company of Illinois
Cause called and argued by Stephanie Scanlan Ross, counsel for appellant, and by Andrew C. Schwartz, and Selma M. Inan, counsel for respondent. Cause ordered submitted.

A10444 Paul Mahlan
8 v.
 State Of California
Cause called and argued by Andrew C. Schwartz, counsel for appellant, and by Selma M. Inan, counsel for respondent. Cause ordered submitted.

Court is adjourned at 10:23 a.m.

Thursday, October 21, 2004 (continued)

A104019 -- The People v. Timothy Ray Cameron.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

A105859 -- In re the Marriage of Raymond Bernard and Roxanne Aminah Moultry.

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

A106695 -- In re James H., a Person Coming Under the Juvenile Court Law. The People v. James H.

The order declaring appellant a ward of the court and committing him to CYA is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

Friday, October 22, 2004

Division One

A105750 -- The People v. Luis Castillo.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A105381 -- The People v. LaCarl Martez Dow.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A106582 -- The People v. Jerome Sunley.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Three

A101889 -- The People v. Rommel Lopez, Jr.

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Division Four

A104600 -- Harry Hodges v. Wells Fargo Bank, LTD., et al.

Accordingly, we reverse the trial court's grant of summary adjudication as to the first cause of action (violation of Labor Code sections 970 and 972), the second cause of action (negligent misrepresentation), the third cause of action (intentional misrepresentation), and the eighth cause of action (promissory fraud). In all other respects, the judgment is affirmed. The matter is remanded for further proceedings consistent with this opinion. Hodges is awarded his costs on appeal. Rivera, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

Friday, October 22, 2004 (continued)

Division Five

A104364 -- The People v. Michael Eugene Heiden.

The judgment is reversed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

A099095 -- The People v. William Edward Kilday.

The judgment is reversed as to counts three, five, and seven, affirmed in all other respect, and remanded for further proceedings consistent with this opinion. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication.)

Monday, October 25, 2004

Division One

A103923 -- Hung Ha v. Iain M. Fry.

By the Court: The petition for rehearing is denied. Since this court's September 24, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

A103651 -- Hung Ha v. Devin Kochis, et al.

By the Court: The petition for rehearing is denied. Since this court's September 24, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

A102919 -- Hung Ha v. Regents of the University of California, et al.

By the Court: The petition for rehearing is denied. Since this court's September 24, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

A103127 -- Hung Ha v. Regents of the University of California, et al.

By the Court: The petition for rehearing is denied. Since this court's September 24, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Stein, Acting P.J.

Monday, October 25, 2004 (continued)

Division Two

A103248 -- The People v. Rufus Tyrone Haynes.

The judgment is reversed as to sentence only and the case is remanded to the superior court for resentencing. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A103305 -- The People v. Manuel Navarro.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A105176 -- Suzan Hughes v. Conrad Lee Klein, et al.

The judgment is affirmed. Hughes shall bear costs of the appeal. Parrilli, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

A103467 -- Citizens For Responsible Business, Inc. v. Jarrow Formulas, Inc.

The trial court's order is affirmed. Respondents shall recover their costs on appeal. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

Monday, October 25, 2004 (continued)

A104558 -- Afaf Dudum v. Floribunda Casitas, Inc.

The judgment is affirmed, except that the amended judgment entered September 18, 2003, shall be modified to delete from the award of attorney fees and costs the expert witness fees of \$9,622.50. The parties shall bear their respective costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A105153 -- Fidelity National Title Insurance Company v. Alan Marks.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A100264 -- The People v. Frederick Gaines, Jr.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A105275 -- Bruce G. Hatch et al. v. County of Mendocino et al.

The judgment is affirmed. Defendants shall recover their costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A103400 -- F. Helen Milner v. Beatrice Yonkie.

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A103095 -- The People v. Albert Maurillo Saucedo.

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A106287 -- In re Ruben F., a Person Coming Under the Juvenile Court Law. The People v. Ruben F.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Monday, October 25, 2004 (continued)

Division Four

A105377 -- The People v. Carlos Palma.

The judgment is affirmed. Kay, P.J. We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A105027 -- The People v. Necolle Savoy.

Judgment affirmed. Reardon, J. We Concur: Kay, P.J., Sepulveda, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, October 26, 2004

The Court convened at 9:30 a.m. at its courtroom located at 350 McAllister St., San Francisco, California. Present: Kay, P.J., Sepulveda, J. and Rivera, J.; Pamela Aguilar, Deputy Clerk; CHP Officer Tony Tam, Bailiff.

A104965 Baby Armando Doe, a Minor et al.

A106082 V.

California State Department of Health Services et al.

Causes called. Teresa Stinson argued for appellants Department of Health Services et al. Lucy Quacinella argued for respondents. Causes submitted.

A104734 Vodafone Americas, Inc.

v.

Collins Flannery

Cause called. George Leal argued for appellant Flannery. William J. Kramer argued for respondent. Cause submitted.

A102378 Cynthia Black

v.

Isabella Nopuente

Cause called. Gregory Brown argued for appellant Black. Daniel Smith argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include: Kay, P.J. and Rivera, J. Counsel orally waived Justice Reardon's appearance on the bench.

A104652 People

v.

Jerry Lynn Jackson

Cause called. Katharine L. Elliott argued for appellant Jackson. Christina Vom Saal argued for respondent. Cause submitted.

The Court recessed at 11:17 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

Tuesday, October 26, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Sepulveda, Acting P.J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Tony Tam, Bailiff.

A102392 People

v.

Randall Hall

Cause called. Each counsel confirmed waiving Justice Reardon's presence on the bench. Laurie D. Savill argued for appellant Hall. David Rose argued for respondent. Cause submitted.

A105671 ClearChannel Outdoor, Inc.

v.

Jacobs, Spotswood, Casper & Murphy

Cause called. Each counsel confirmed waiving Justice Reardon's presence on the bench. Michele A. Carli argued for appellant Jacobs. Timothy O'Leary argued for respondent. Cause submitted.

The Court adjourned at 2:10 p.m.

Tuesday, October 26, 2004 (continued)

Division Five

A105780 -- Edward Reidy v. City and County of San Francisco.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J.
(Certified for Partial Publication.)

Wednesday, October 27, 2004

Division One

A105352 -- In re Xaviera F., a Person Coming Under the Juvenile Court Law. The People v. Xaviera F.

Accordingly, the case is remanded to the juvenile court to specify the maximum term of defendant's confinement pursuant to Welfare and Institutions Code section 726, subdivision (c), and calculate the credits she has earned. In all other respects the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A107478 -- Mark E. Schakel, et al. v. The Superior Court of the County of Sonoma.

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Two

A104729 -- The People v. Christopher Douglas Davis.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A105229 -- Maurice Davis v. City and County of San Francisco et al.

Judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A104950 -- Scott Martinez v. Maria Visintini.

The appeal is dismissed for the failure of appellant to provide the court with intelligible legal argument in her brief. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A104936 -- The People v. Renonredo Williams.

The denial of defendant's July 23, 2003 motion to suppress evidence is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Wednesday, October 27, 2004 (continued)

Division Three

A104351 -- Pauline Nicola v. Lillie L. Calabrese, et al.

The order denying the SLAPP motion is reversed. The court is directed to enter an order granting the motion as to the causes of action for “wrongful endeavor to evict,” breach of the covenant of quiet use and enjoyment, and injunctive and declaratory relief. Nicola shall recover her costs on appeal, and may seek attorney fees in the trial court under the SLAPP statute. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A105799 -- The People v. Quincy Shuron Tryels.

The February 25, 2004 judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, October 27, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuinness, P.J., Kay, P.J., Parrilli, J. and F. Abad, Deputy Clerk.

A101913 Communities for a Better Environment,
 v.
 City of Richmond, et al.
Cause called and argued by Adrienne Lyn Bloch, counsel for appellant, and David Martin, counsel for respondent City of Richmond. Ronald Van Buskirk, counsel for respondent Chevron Products Co., appeared but did not argue. Cause ordered submitted.

Justice Kay left the benched and Justice Pollak joined the bench.

A107367 In re Jeffrey Thomas Gray on Habeas Corpus.
Cause called and argued by Louis Biggio, counsel for petitioner, and David Carr, counsel for respondent. Cause ordered submitted.

A104256 Robert Schmidt, et al.,
 v.
 Levi Strauss & Co., et al.
Cause called and argued by Joseph Ainley, counsel for appellants, and Margaret Edwards, counsel for respondents. Cause ordered submitted.

Justice Corrigan joined the bench and Justice Parrilli remained on the bench. Justice McGuinness announced the panel for the next case is McGuinness, P.J., Corrigan, J. and Pollak, J.

A105916 The People,
 v.
 Andres Lamar Gatson.
Cause called and argued by David Martin, counsel for appellant, and Margo Yu, counsel for respondent. Cause ordered submitted.

Justice McGuiness announced the panel for the next case is McGuiness, P.J., Corrigan, J. and Pollak, J.

A102644 Kaiser Aluminum & Chemical Corporation,
v.
City of Oakland.
Cause called and argued by Charles Ajalat, counsel for appellant, and Kathleen Boyd, counsel for respondent. Cause ordered submitted.

Justice Pollak left the bench.

A104691 Melinda B. Hartford, et al.,
v.
James Michael Moran.
Cause called and argued by John Hartford, counsel for appellants, and Michael Stevens, counsel for respondent. Cause ordered submitted.

A104538 Deloris Allen,
v.
City of Oakland, et al.
Cause called and argued by Deloris Allen, appellant in propria persona, and Chris Kee, counsel for respondents. Cause ordered submitted.

Justice McGuiness left the bench and Justice Pollak rejoined the bench.
Justice Corrigan presided over the last case on calendar.

A101459 The People,
v.
William Curtis Wilson.
Cause called and argued by Victor Morse, counsel for appellant, and Enid Camps, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED

Wednesday, October 27, 2004 (continued)

Division Five

**A102819 -- City of Brentwood v. Central Valley Regional Water
Quality Control Board.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J.
(Certified for Partial Publication.)

A099244 -- The People v. Sherman Hill, Jr.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

Thursday, October 28, 2004

Division One

A103737 -- Bernard Gordon v. California Department of Corrections.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A105631 -- In re John C., a Person Coming Under the Juvenile Court Law. The People v. John C.

Having independently reviewed the record, we find that the court committed no dispositional error, appellant was represented by competent counsel throughout the proceedings, and no other legal issues require further briefing. Accordingly, the dispositional order appealed from is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A102079 -- Desmond Organ et al. v. Dennis S. Weaver et al.

The judgment as to Morgan is affirmed. The judgment as to Chambers and Galine is reversed and remanded for further proceedings consistent with this opinion. Weaver is to recover his costs from Morgan incurred in responding to Morgan's appeal. Chambers and Galine are awarded their costs on appeal as against Weaver. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A102644 -- Kaiser Aluminum & Chemical Corporation v. City of Oakland.

The judgment is affirmed. The City of Oakland is to recover its costs on appeal. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A106404 -- The People v. Gregory Wayne Sullivan.

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

Thursday, October 28, 2004 (continued)

Division Five

A103043 -- Cleo Dixon v. Dino T. Cacioppo et al.

The appeals from the March 28, 2003 and May 20, 2003 orders striking plaintiff's attempts to disqualify the trial judge for cause are dismissed. The judgment dismissing Dr. Cacioppo from the action is affirmed. The order dismissing San Leandro Hospital from the action is affirmed. The order denying the motion for new trial and to vacate judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J. (Not for Publication.)

A105575 -- Estate of Sophie Tucker Greenberg, Deceased.

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

MINUTES

COURT OF APPEAL STATE OF CALIFORNIA FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, October 28, 2004

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J., Simons, J., Gemello, J.; and Richard H. Sandvik, Deputy Clerk.

A10557 In re the Estate of Sophie Tucker
5 Norman Greenberg

v.

Susan Elliot

Cause called and argued by Norman Greenberg, appellant in pro per, and by James Ira Cohen, counsel for respondent. Cause ordered submitted.

A10183 Abdul-Jalil al-Hakim
2 v.

Rescue Industries, Inc.

Cause called and argued by Lewis N. Nelson, counsel for appellant, appearing via teleconference, and by Todd A. Jones, counsel for respondent. Cause ordered submitted.

A10544 Anthony Cadlo et al.
4 v.

Owen-Illinois Corporation

Cause called and argued by Gilbert L. Purcell, counsel for appellants, and by Jean Bertrand, counsel for respondent. Cause ordered submitted.

A10394 Evelyn Kottle Simmons
7 v.

Robert E. Ravenscroft

Cause called and argued by Daniel B. Spitzer, counsel for appellant, and by Howard M. Hoffman, counsel for respondent. Cause ordered submitted.

A10339 Marie Z. Brandstetter et al.

3 v.

Frank E. Lembi

Cause called and argued by Bradley M. Kass, counsel for appellants, and by
Herbert W. Yanowitz, counsel for respondents. Cause ordered submitted.

- A10428 Marie Z. Brandstetter et al.
9 v.
Frank E. Lembi et al.
Cause called and argued by Bradley M. Kass, counsel for appellants, and by Herbert W. Yanowitz, counsel for respondents. Cause ordered submitted.
- A10553 B. Wright
6 v.
David Lazar, et al.
Cause called and argued by B. Wright, appellant, in pro per, and by David B. Newdorf, counsel for respondents. Cause ordered submitted.
- A10497 The People
6 v.
Aaron Timms, Jr.
Cause called and argued by Stephanie L. Clarke, counsel for appellant, and by Nancy B. Tung, counsel for respondent. Cause ordered submitted.
- A10404 Jozef Czerski
7 v.
Yellow Cab Cooperative, Inc. et al.
Cause called and argued by Lawrence Kern, counsel for appellants, and by Michael Cordoza, counsel for respondent. Cause ordered submitted.
- A10145 The People
6 v.
Thomas Stephen Gunn
Cause called and argued by James Kyle Gee, counsel for appellant, and by Jeff M. Bryant, counsel for respondent. Cause ordered submitted.
- A10179 Mario Feusier et al.
0 v.
Cal State Mortgage Co., Inc., et al.
Cause called and argued by John B. Rudquist, counsel for appellants via teleconference, and by William R. Walker, counsel for respondents. Cause ordered submitted.

Court adjourned at 12:06 p.m.

Friday, October 29, 2004

Division One

A106573 -- The People v. Titus Hill.

We find no arguable issues and, accordingly, affirm the judgment.
Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A106711 -- Iron & Silk, Inc. v. The Superior Court of Contra Costa County; Champion Arts, Inc., et al., R.P.I.

Let a peremptory writ of mandate issue, commanding respondent Contra Costa County Superior Court to set aside the "Judgment by Court on First Amended Cross-Complaint," filed May 7, 2004, in *Iron & Silk, Inc. v. Champion Arts, Inc., et al.*, and Related Cross-Action (County of Contra Costa Superior Court No. C02-02076). The stay previously imposed shall remain in effect until the superior court complies with the peremptory writ. Petitioner shall recover its costs. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A105775 -- Iron & Silk, Inc. v. Champion Arts, Inc., et al

Defendant has failed to furnish a record adequate to satisfy the burden of affirmatively demonstrating error in the trial court's judgment. (*Iliff v. Dustrud*, *supra*, 107 Cal.App.4th 1201, 1210; *Thompson v. Thames* (1997) 57 Cal.App.4th 1296, 1308.) Without the declarations, we can neither find any evidence inadmissible nor reverse the trial court's determination that plaintiff established a probability of prevailing on the claims. (*In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 978; *Gee v. American Reality & Construction, Inc.*, *supra*, 99 Cal.App.4th 1412, 1416.) Accordingly, the judgment is affirmed. Costs on appeal are awarded to plaintiff. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

A104665 -- Danny Ornelas v. Yamaha Motor Corporation.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

A105407 -- Snyder Trust Enterprises, et al. v. Worldpoint Interactive, Inc.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Friday, October 29, 2004 (continued)

Division Two

A105801 -- The People v. Tracy Margaret Alcantra.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A106074 -- In re J.E.H., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Bureau of Children & Family Services v. Tammie A.

The appeal of the visitation order with respect to J.E.H. is dismissed for mootness. In all other respects, we affirm the orders of the March 26, 2004 hearing. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A106681 -- The People v. Virginia Margaret Macias.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

A100419 -- The People v. Charles Erwin Mason.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A106143 -- The People v. William Anderson Pone.

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Division Three

A104538 -- Deloris Allen v. City of Oakland, et al.

The judgment filed on September 5, 2003, and the order entered on October 20, 2003, are affirmed. In the interests of justice, the parties shall bear their own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Friday, October 29, 2004 (continued)

A101913 -- Communities For A Better Environment v. City of Richmond; Chevron Products Co., R.P.I.

The judgment is reversed and the superior court is directed to issue a peremptory writ of mandate directing the City to set aside resolutions adopting a negative declaration and a conditional use permit and ordering the City to determine whether an EIR should be required after examining the cumulative impacts of the project in connection with past, present and probable future projects at the refinery. Each side shall bear its own costs on appeal. McGuiness, P.J. We Concur: Kay, P.J.*, Parrilli, J. (Not for Publication.)

*Presiding Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A106075 -- In re Jason E., a Person Coming Under the Juvenile Court Law. The People v. Jason E.

The orders of the juvenile court are affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A105916 -- The People v. Andreas Lamar Gatson.

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication.)

A107367 -- Jeffrey Thomas Gray v. The Superior Court of Napa County; Medical Board of California, R.P.I.

Let a peremptory writ of mandate issue directing respondent court to vacate its May 12, 2004 order prohibiting Gray from practicing as a physician and surgeon. Due to the need for a speedy resolution of this issue, our decision will be final 10 days after the date on which this opinion is filed. (Cal. Rules of Court, rule 24(b)(3).) Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Certified for Publication.)

A105460 -- Ben Herman, et al. v. Erika Zarco, et al.

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Friday, October 29, 2004 (continued)

A105460 -- Ben Herman, et al. v. Erika Zarco, et al.

By the Court: Since this court's September 29, 2004 opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

A104427 -- In re Joshua L., a Person Coming Under the Juvenile Court Law. The People v. Joshua L.

The order committing Joshua to the CYA is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication.)

A104305 & A104306 -- In re Jonathan Q., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Kenneth Q.

The orders denying modification and terminating parental rights are affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication.)

A106506 -- The People v. Randall Ronald Rose.

The order of restitution is reversed, and the matter is remanded to the trial court with directions to conduct a restitution hearing. In all other respects, the judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A104256 -- Robert Schmidt, et al. v. Levi Strauss & Co., et al.

The order denying the motion to strike is reversed. The trial court is directed to permit the parties to conduct limited discovery, for the purpose of determining whether Levi Strauss can establish a prima facie case sufficient to defeat the motion. The parties shall bear their own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A106131 -- In re Anthony W., a Person Coming Under the Juvenile Court Law. The People v. Anthony W.

The order of commitment to the California Youth Authority is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Friday, October 29, 2004 (continued)

A102414 -- In re the Marriage of William and Lori Windham.

The judgment is affirmed. William shall recover his costs on appeal.
Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

Division Four

A103046, A103742 -- Robert Krumme v. Mercury Insurance Company et al.

The judgment and the attorney fee order are affirmed. Kay, P.J. We Concur: Reardon, J., Rivera, J. (Certified for Publication.)

A106891 -- In re Jose M., a Person Coming Under the Juvenile Court Law. The People v. Jose M.

the orders that the minor be continued as a ward of the court and committed to CYA are affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

A104811 -- Howard C. Schuman v. Leonard B. Berger, as Trustee, etc., et al.

The judgment is affirmed. Sepulveda, J. We Concur: Kay, P.J., Reardon, J. (Not for Publication.)

Division Five

A101832 -- Abdul-Jalil Al-Hakim v. Rescue Industries, Inc., et al.

We affirm the judgment. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A101790 -- Maria Feusier v. Cal State Mortgage Co., Inc.

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication.)

Friday, October 29, 2004 (continued)

A104436/A104448 -- Paul Mahlan et al. v. State of California.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J.
(Not for Publication.)

A103317 -- The People v. Dmitry Nick Minin.

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J.,
Simons, J. (Not for Publication.)

A101106 -- The People v. Aaron D. Nicholson.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J.
(Certified for Partial Publication.)

A105536 -- B. Wright v. David Lazar et al.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

A105257 -- The People v. Clemon Maurice Young.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)